

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

In re:) Case No. 17-17361
RICHARD M. OSBORNE) Chapter 7
Debtor)
) Judge Arthur I. Harris
)

LIMITED OBJECTION OF CITIZENS BANK, N.A. TO
THIRD INTERIM APPLICATION OF FRED P. SCHWIEG, ESQ. ATTORNEY AT
LAW FOR APPROVAL OF COMPENSATION AND REIMBURSEMENT OF
EXPENSES AS COUNSEL FOR DEBTOR AND DEBTOR IN POSSESSION

Citizens Bank, N.A. fka RBS Citizens, N.A. dba Charter One (“Citizens”), by and through counsel, objects to Third Interim Application of Fred P. Schwieg, Esq. Attorney at Law for Approval of Compensation and Reimbursement of Expenses as Counsel for Debtor and Debtor in Possession (the “Fee Application”) [Doc. 466] for the limited purpose of prohibiting the use of certain escrowed funds held by the Debtor for payment of any fees allowed if the Fee Application is granted. In support of this Limited Objection, Citizens states as follows:

1. On April 18, 2018, Citizens filed a proof of claim (the “Claim”) in the amount of \$8,076,373.53 plus other amounts as stated in the Claim. In the Statement of Claim, which is attached as part of the Claim, the history of the secured obligations owed to Citizens is outlined in detail. The Claim is designated by the Court as Claim No. 28. Since the filing of the proof of claim, Citizens has received \$150,000 from a sale of real property in the Wilson Land Properties bankruptcy case (18-10514) and \$50,000 from the sale of real property in this case. Receipt of an additional approximately \$9,000 from the sale of another property in the Wilson Land Properties bankruptcy case is anticipated but not yet confirmed.
2. No objection has been filed to the Claim.
3. On December 21, 2018, this Court entered the Agreed Order Granting Motion of

Richard M. Osborne to Sell a Parcel of Real Property Located at 7325 Reynolds Road, Mentor OH [Doc. 317] (the “Sale Order”).

4. Pursuant to Paragraph 16 of the Sale Order:

16. After adjustments and payments at Closing of all amounts listed in paragraph 15 above, the remaining amount is estimated to be \$187,714.66 (the “Net Proceeds”). The Net Proceeds shall be paid by the Escrow Agent to Debtor, but only for Debtor to hold those funds in a separate and segregated DIP account subject to further court order.

5. Citizens takes no position as to the amount of fees and expenses requested by Debtor’s counsel in the Fee Application.

6. The Net Proceeds remain subject to Citizens’ lien and consist of the proceeds from the sale of Citizens’ collateral. (See Sale Order at paragraph D.)

7. To the extent that the Fee Application is granted in whole or in part, the Debtor should be prohibited from using any of the Net Proceeds to pay Debtor’s counsel’s fees and/or expenses.

8. The Debtor’s Chapter 11 Case was converted to a Chapter 7 on July 3, 2019.

WHEREFORE, Citizens respectfully requests that its Limited Objection be sustained and that the Debtor be prohibited from using any of the Net Proceeds to pay any amount of fees and/or expenses awarded to Debtor’s counsel if the Fee Application is granted in whole or in part, and for such other and further relief as may be allowable pursuant to applicable law or in equity.

Respectfully submitted,

/s/ Michael S. Tucker

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2019, a copy of the foregoing Limited Objection was filed electronically. Notice of this filing will be sent to all parties registered to receive electronic notices through the Court's CM/ECF system as listed below. Parties may access this filing through the Court's PACER system.

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